

V.

ERIC HOLCOMB,)
in his official capacity as Governor)
of the State of Indiana,)
Defendant.)

Defendant, Eric Holcomb, in his official capacity as Governor of the State of Indiana, by counsel, Deputy Attorney General, Kelly S. Earls, by counsel, pursuant to Indiana Trial Rules 12(B)(1) and 12(B)(6) respectfully move this Court to dismiss this matter. In support thereof, Defendant respectfully states the following:

1. On September 13, 2019, Plaintiff, West Lafayette Community School Corporation, filed this Petition, naming the Governor as the sole defendant, to request injunctive and declaratory relief from a statute, namely, Ind. Code § 20-26-7-1, which relates to the: “Sale of unneeded property; ease or sale to charter school” (the “Statute”).

2. On October 10, 2019, counsel for Defendant filed their appearances and a notice to the Court of an unopposed extension of time to file a response, stating a response would be filed on October 24, 2019.
3. This Defendant's Motion to Dismiss and Brief in Support is in compliance with the response time given to the Court.

Argument

4. This case is not ripe for review as Plaintiff has not been affected by the Statute, and has not proven that it will be affected by the Statute in the near future. This matter is merely hypothetical and speculative. Therefore, Plaintiff's Complaint should be dismissed pursuant to Indiana Trial Rule 12(B)(1) or 12(B)(6). *See generally, Thomas ex rel. Thomas v. Murphy*, 918 N.E.2d 656, 663 (Ind. Ct. App. 2009).
5. As this is not a justiciable claim, Plaintiff does not have standing to request declaratory and injunctive relief against the Governor. Accordingly, Plaintiff's Complaint against the Governor should be dismissed for failure to state a claim upon which relief can be granted pursuant to Indiana Trial Rule 12(B)(6). (See *Jones v. Sullivan*, 703 N.E.2d 1102, 1106 (Ind. Ct. App. 1998) (citations omitted), the Indiana Court of Appeals holding "standing is a restraint upon this Court's exercise of its jurisdiction in that we cannot proceed where there is no demonstrable injury to the complainant before us.")

6. Indiana statutes specifically limit school corporations' authority, and Plaintiff has no standing to sue the Sovereign on this issue. (See Ind. Code § 20-26-3-et seq. see also Ind. Code §20-26-5-4(a)(1).) School corporations exist by creature of statute, and the legislature has given them limited power. Without standing, Plaintiff's Complaint does not present claims upon which relief can be granted, and should be dismissed pursuant to Indiana Trial Rule 12(B)(6).
7. Under the Canon of Constitutional Avoidance, this Court should not entertain constitutional questions unless and until it has first resolved all of the other merits. Indiana courts give great deference to the legislative branch, and have long recognized that a court must interpret a statute in a way that renders it constitutional. *Willis v. State*, 492 N.E.2d 45, 47 (Ind. Ct. App. 1986).
8. Neither Indiana's Constitution, nor the United States' Constitution Takings Clauses apply to public property and public land taken by the State from a political subdivision, as defined in Ind. Code §24-9-2-11. Therefore, the authority under which Plaintiff is suing does not apply in this situation. *See, e.g., United States v. Carmack*, 329 U.S. 230, 242-43 (1946), "[w]hen, however, a sovereign state transfers its own public property from one governmental use to another, or when the Federal Government takes property from state ownership merely so as to put it to a federal public use for which the state already holds it in trust, a like obligation does not arise

to pay just compensation for it.” *Carmack*, 329 U.S. at 242 at fn12, citing *In re Certain Land in Lawrence, D.C.*, 119 F. 453 (D. Mass. 1902).

9. Plaintiff’s Complaint should be dismissed for a failure to add appropriate parties, namely the Indiana Attorney General, the Indiana Department of Education, local officials, including the county assessor and others; as such the Court should further dismiss the Complaint for a failure to comply with the pleading requirements of Trial Rule 8, as indispensable parties to this suit were not included in violation of Trial Rule 19(A).
10. Accordingly, for the reasons set forth, Plaintiff’s Complaint against the Governor should be dismissed for failure to state a claim upon which relief can be granted pursuant to Indiana Trial Rules 12(B)(1) and 12(B)(6).
11. The Governor is contemporaneously filing a supporting Brief which is incorporated herein.

WHEREFORE, the Governor respectfully request this Court dismiss Plaintiff’s Complaint and order all other just and proper relief.

Respectfully submitted,

Curtis T. Hill, Jr.
Attorney General of Indiana
Attorney No. 13999-20

By: /s/Kelly S. Earls
Kelly S. Earls
Deputy Attorney General
Attorney No. 29653-49

CERTIFICATE OF SERVICE

I certify that on October 24, 2019, the foregoing was served upon the following person(s) via IEFS, if Registered Users, or by depositing the foregoing in the U.S. mail, first class postage prepaid, if exempt or non-registered user:

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